United Nations A/HRC/31/NGO/132

General Assembly

Distr.: General
22 February 2016

English only

Human Rights Council
Thirty-first session
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02641(E)

Please recycle

Sri Lanka: Maintain momentum, deliver on human rights commitments

In October 2015, the Sri Lankan Government made historic commitments to the people of Sri Lanka and to the Human Rights Council (HRC) "to undertake a comprehensive approach to dealing with the past, incorporating the full range of judicial and non-judicial measures" aimed at delivering truth, justice, reparation and guarantees of non-recurrence.[1] These four pillars are essential to end impunity for violations and abuses.

Sri Lanka's legacy of impunity stretches back decades. Alleged human rights violations and abuses by all parties during, and following, the conflict have still not been effectively investigated. Torture in police custody continues.

Sri Lanka's decision to co-sponsor UN Human Rights Council Resolution 30/1 *Promoting reconciliation, accountability and human rights in Sri Lanka* last October signals an important opportunity to end this injustice and address the harm caused. The resolution contains commitments to the Council to implement national reforms and establish new mechanisms. Furthermore, it also encourages implementation of the important recommendations set out in the OHCHR's investigation report, including the establishment of a hybrid special court integrating international judges, lawyers, prosecutors and investigators.[2]

Amnesty International welcomed Sri Lanka's willingness to take important steps towards fulfilling its obligations and ensuring the rights of victims. When our organization visited Sri Lanka in December 2015, it found that progress was being made towards ratifying the *International Convention for the Protection of All Persons from Enforced Disappearances*, establishing a national office for missing persons and developing a strategy to consult victims, affected communities and Sri Lankan society on "reconciliation mechanisms". The government has also issued a standing invitation to UN Special Procedures, as well as specific invitations to the Special Rapporteurs on the Independence of Judges and Lawyers, Torture, Freedom of Expression and Minorities to visit Sri Lanka in 2016. However, we note that efforts to implement the commitments have been slow and overshadowed by concurrent constitutional reform efforts.
Amnesty International urges the Government of Sri Lanka to ensure strong momentum in building a domestic culture of human rights respect and protection in genuine consultation with civil society and victims and their families who have waited so long for truth, justice and reparation.

Consultation
Public consultation on design and implementation of the national mechanisms has been slow to date and many victims and their families are still unclear how to make their views known. Taking into account the delays so far, a realistic timeline for the consultation should be developed to allow for full public participation. Additionally, consultations should be inclusive of all affected communities, independent and transparent. The process should cover all aspects of the four pillars of transitional justice and, importantly, must take all steps needed to ensure the effective participation of women from all communities. The process must not be used to sell pre-determined models or strategies and should be completed prior to the design and implementation of proposed mechanisms.
In regards to this ongoing consultation, Amnesty International, building on our long history of working to fight impunity, would like to share the following general observations on achieving each of the four pillars of transitional justice.

Justice
The justice mechanism's mandate will be central to its credibility and effectiveness. In devising its form, composition, scope and timeframe, Sri Lanka should be ambitious and seek to deliver justice to as many victims as possible and to all affected communities. We support OHCHR's proposal for a hybrid special court, but the court must do more than investigate a handful of cases and must form part of a broader initiative to strengthen the national justice system so that national courts can ultimately prosecute other cases and address future human rights violations effectively.

[1] Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/RES/30/1, 14 October 2015, para. 4.
[2] Report of the OHCHR Investigation on Sri Lanka (OISL), Recommendation 20, page 251, 16 September 2015, A/HRC/30/CRP.2.

Decades of serious human rights violations and abuses make it essential that the period of investigation is not arbitrarily limited to a specific time period that would unfairly exclude victims.

Engagement of international judges, prosecutors, defence lawyers, forensic experts, and victim and witness protection experts will be of the utmost importance to maintain the credibility, independence and effectiveness of the process. Effective witness protection is also vital and must be independent of any security or law enforcement body that is suspected of involvement in human rights violations.

Sri Lanka's current laws remain inadequate to prosecute crimes under international law effectively. Reform is needed. Genocide, crimes against humanity, war crimes (including war crimes under customary international law), torture, enforced disappearance and extrajudicial execution should be made crimes in Sri Lankan law with retroactive effect over past crimes, as permitted by Article 15(2) of the ICCPR. Principles of criminal responsibility, including command responsibility, superior orders and the prohibition of statutes of limitations, immunities and amnesties for crimes under international law must also be adopted.

A comprehensive outreach program must be established to inform the whole population about the justice efforts at all stages of the process in order to build confidence and correct any misinformation. Broadcasting or Internet streaming of trials should be considered, and proceedings should be open to independent trial observers.

Truth

Independent of the Office of Missing Persons, a truth commission should be established to document and clarify, as far as possible, the facts about past human rights violations and abuses by all sides throughout, and following, the conflict. This commission should provide information it gathers to investigations and criminal and civil proceedings. It should be mandated to recommend full reparation to victims and their relatives. The commission must be independent, impartial and made up of highly qualified commissioners with expertise, including on human rights, sexual and gender based violence, and violence against children. It must be granted the powers and authority to gather all information it considers relevant. It must not have the power to grant amnesties for crimes under international law. It must also be able to provide effective victim and witness protection. All aspects of its work should be made public provided that witnesses are not endangered by doing so.

Reparation

Victims should be provided with full reparation to address the harm they have suffered and to help them rebuild their lives. A reparation program should be established to provide comprehensive measures including restitution, rehabilitation, compensation and satisfaction, as well as measures that would prevent repetition of past violations (see below) and improve the lives of marginalized groups, including women. If a reparation program is developed as part of the truth commission process, then there should be provision for interim reparation measures to address the immediate needs of victims who require urgent relief.

Non-recurrence

Justice, truth and reparation can be important mechanisms to ensure that past human rights violations and abuses will never be repeated.

In addition, the government of Sri Lanka should:

- Conduct security sector reform, including measures to ensure that law enforcement agencies and the military respect human rights;
- Establish a vetting system of law enforcement and security officials to remove or bar those persons about whom there is evidence of them having committed serious human rights violations;
- Review and reform laws that have contributed to human rights violations, including the Prevention of Terrorism Act and the Public Security Ordinance;
- Adopt a constitutional bill of rights that provides victims with the right to effective remedies;
- Take effective measures to combat discrimination within Sri Lankan society;
- Ensure, for the whole population, minimum essential levels of economic, social and cultural rights, such as the rights to food, water, sanitation, healthcare and housing and, where necessary, seek international cooperation and assistance to do so;

- Investigate attacks against journalists, human rights defenders, and members of religious minorities and civil society and ensure that perpetrators are brought to justice;
- Ratify and implement key human rights treaties to strengthen protection and ensure there cannot be impunity; and
- Seek the assistance of and cooperate fully with all relevant UN Special Procedures.

The United Nations system and Member States should support this vital process by:

- Encouraging Sri Lankan authorities to affirm and deliver on the national and international human rights commitments made in 2015 and ensuring that the Human Rights Council monitors progress and insists on implementation.
- Offering technical assistance and financial support for the development and implementation of a genuine and effective consultation process; justice, truth and reparation mechanisms that meet international standards; legal reform and any other steps to ensure non-recurrence.
- Ensuring that all assistance provided emphasizes the centrality of victims and their special status in the design and implementation of mechanisms to deliver truth, justice, reparation and non-recurrence of violations.
- Assisting Sri Lanka and encouraging other international support to bring witness protection into line with international standards and to ensure its independence.
- Entering into agreements with Sri Lanka to relocate to safe countries victims and witnesses who face serious risk due to their engagement with the justice, truth or reparation mechanisms.
- Assisting Sri Lanka to develop a rigorous human rights vetting program for law enforcement agencies and the military for domestic purposes, and insisting on vetting of all Sri Lankan personnel contributed to UN peacekeeping operations, training or exchanges programs.
- Providing cooperation and mutual legal assistance to Sri Lankan or hybrid courts seeking to prosecute persons suspected of crimes under international law or other serious human rights violations, subject to safeguards precluding the imposition of the death penalty.
- Pursuing establishment of an OHCHR Office in Sri Lanka.